Supreme Court, U.S.
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No.

IN THE SUPREME COURT OF THE UNITED STATES

AEGIS SECURITY INSURANCE COMPANY;

Petitioner,

vs.

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent,

On Petition for Writ of Certiorari
From Denial of Review by the California Supreme Court

AMENDED PETITION FOR WRIT OF CERTIORARI

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I. QUESTIONS PRESENTED

Whether a Superior Court's declaration of forfeiture on a bail bond and powers of attorney, which disregards express limiting language in the bond and powers, impairs the obligation of a contract in violation of Art. I, Sec. 10, Clause 1 of the United States Constitution.

Whether a Superior Court's declaration of forfeiture on a bail bond and powers of attorney, which disregards express limiting language in the bond and powers, constitutes an impermissible taking of a property right without just compensation in violation of the Fifth and Fourteenth Amendments of the United States Constitution.

Whether a Superior Court's declaration of forfeiture on a bail bond and powers of attorney, which disregards express limiting language in the bond and powers, violates the due process requirements of the Fourteenth Amendment to the United States Constitution.

II. LIST OF PARTIES

Aegis Security Insurance Company, a Pennsylvania corporation, Petitioner

People of the State of California, as represented by the District Attorney of the County of Los Angeles, Respondent

III. CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Petitioner discloses that Petitioner is 100% owned by a parent corporation, Aegis Security, Inc. Aegis Security, Inc. is not

publicly owned. No publicly-held corporation owns more than ten percent of Petitioner's stock.

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PETITION FOR WRIT OF CERTIORARI

This Petition is a challenge to a California state court's arbitrarily declaring a surety bail bond forfeited despite limiting language within the bond precluding such forfeiture. In so doing, the state court violated basic tenets of due process, illogically and subjectively deprived the Petitioners of vested contractual rights and unlawfully impaired Petitioner's surety contract with the state, in violation of the Constitutional prohibition against impairment of contracts.

It has been the opinion of this Court that the Impairment Clause (Art. I, Sec. 10, Cl. 1)(also referred to as the "Contract Clause") only precludes the passage of laws by a Legislature impairing contracts, and not to similar actions of state officials or the judiciary. At the same time, this Court has increasingly recognized that such state actors, particularly judges, perform lawmaking functions. Judges often do so legitimately as part of our common law tradition, but they also do so in a manner which substitutes their own views for that of Legislatures and the People, to the exasperation of this Court. Whether salutary or not, the distinction between the legislative and judicial functions envisioned by the Founders has been effectively blurred. This case presents such an example, in which a California court ignored basic contract law to declare forfeiture so that the state could garner a windfall.

The Court's continued literal application of the Impairment Clause only to state legislative enactments creates two distinct classes of laws: such legislative enactments are subject to the Impairment Clause, whereas judicially-created law is protected. As the difference between the two is now indistinct at best, this Court should revisit past decisions that so narrowly and literally interpret

the Impairment Clause, and apply its protections more broadly. Such application is especially warranted in this case, so that a state cannot through judicial action disregard contractual language for its own benefit.

The state's action also violates the Fifth Amendment Takings Clause. Review is warranted on Fifth Amendment grounds to clear up possible confusion concerning the standard to be applied in takings cases. Until recently, that standard was relatively clear – the taking was unconstitutional if it failed to substantially advance a legitimate state issue. Earlier this year, however, the Court announced that rule did not apply in eminent domain cases involving real property. *Lingle v. Chevron U.S.A., Inc.* (2005) __ U.S. ___, 125 S.Ct.2074, 2083. The *Lingle* ruling left unclear what test should be applied in other takings cases, including takings of vested contractual property rights. Review is necessary to further define the standard, and to protect such intangible property rights, which are protected by the due process provisions of both the Fifth and Fourteenth Amendments.

This case presents issues of great public importance and constitutional concern. This Court should grant review of the state court's capricious derogation of Petitioner's contractual rights.

OPINION BELOW

The decision below was an opinion by the Court of Appeals of the State of California, Second District. It was not published. The case was styled *The People v. Aegis Security Insurance Company*, Case No. B130584. The decision was entered December 8, 2004. The opinion was based on an appeal from an order of the Los Angeles County Superior Court entered July 11, 2003, denying Petitioner's motion to vacate the order of forfeiture and exonerate the

bond. On March 16, 2005, the California Supreme Court denied petition for review of the Court of Appeals decision, Case No. S130583, filed by the Petitioners on January 11, 2005.

JURISDICTION

Review was denied by the California Supreme Court on March 16, 2005. This Court's jurisdiction to consider this petition from the final judgment or decree by the highest court of the state in which the decision could be had is invoked pursuant to 28 U.S.C. §1257.

CONSTITUTIONAL PROVISIONS AND STATUES

Article I, Section 10, Clause 1 of the United States Constitution states: "No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility."

The Fifth Amendment of the United States Constitution states: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

The Fourteenth Amendment of the United States Constitution, Section 1, states: "All persons born or naturalized in the United States, and subject to the

jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Petitioner Aegis Security Insurance Company ("Aegis") is a surety licensed to issue bail bonds on behalf of criminal defendants in the Los Angeles County Superior Court. On December 1, 2002, an agent of Petitioner, Apo's Bail Bonds of La Crescenta, California, issued two Aegis Security Insurance Company bail bonds, Nos. ASIC1000-1500009 (in the amount of $560,000) and ASIC1000-1500016 (in the amount of $1 million). The bonds secured the release of defendant Carlos Alberto Hernandez.

The bonds were in excess of the authority granted to the agent by Aegis. The agent was authorized only to write bail bonds in amounts up to $1 million. Hernandez' bail was for $1,560,000. The county accepted the bonds even though they expressly violated the agent's authority.

The county's acceptance also violated the express provisions of the bonds and powers of attorney, which contain language calculated to preclude the combination of bonds and powers of attorney. On the face of each bond was printed a box with the following caveat:

> "THE BOND IS VOID IF WRITTEN FOR AN AMOUNT GREATER THAN THE POWER OF ATTORNEY ATTACHED HERETO, IF MORE THAN ONE SUCH